



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2203 OF 2023

XYZ

... Petitioner

V/s.

The State Of Maharashtra And Anr.

... Respondents

Ms. Gauri G. Joglekar a/w Mr. Praful A. Patil for Petitioner.

Mrs. G. P. Mulekar, APP for Respondent No.1-State.

Mr. Pradip P. Ahire, PSI, MIDC Police Station, Mumbai is present.

**CORAM : A.S. GADKARI AND
SHIVKUMAR DIGE, JJ.**

DATE : 7th AUGUST, 2023.

PC. :

1. Learned counsel for Petitioner submitted that, in pursuance of Order dated 21st July, 2023, instead of annexing copy of charge-sheet, by way of amendment she inadvertently filed an additional Affidavit placing on record the charge-sheet. The said Affidavit alongwith charge-sheet is at page Nos.41 to 75. In view thereof and as and by way of an exception, we permit placing on record of charge-sheet alongwith Affidavit by the Petitioner in compliance of with Order dated 21st July, 2023.

2. Petitioner, victim in C.C. No. 2064/PW/2022 pending on the file of learned Additional Chief Metropolitan Magistrate, 22nd Court, Andheri, Mumbai, arising out of C.R. No. 33 of 2022 dated 17th January, 2022, registered with MIDC Police Station, Mumbai, under Sections 354,

354(B) and 509 of the Indian Penal Code, has invoked jurisdiction of this Court under Article 226 of the Constitution of India, for a direction to the Investigating Agency to re-investigate the said crime denovo.

3. Heard Ms. Joglekar, learned counsel for Petitioner and Mrs. Mulekar, learned APP for State. Perused record of Petition and the copy of Final Report submitted by the investigating agency before the trial Court.

4. It is the contention of the Petitioner that, Police conducted investigation of the present crime haphazardly and did not take into consideration vital aspects of the case. She submitted that, though at the time of lodgment of crime Section 376 of the IPC was applied to it, at the time of filing of charge-sheet the investigating agency dropped it and submitted charge-sheet under Sections 354, 354B and 509 of the IPC. Learned counsel for Petitioner contended that, the Petitioner was sedated/ administered stupefying substance on 22th October, 2021 when she visited the residential premise of accused at Marol, Mumbai. That, the possibility of 'penetration' as defined under Section 375 of the IPC can not be ruled out. The said penetration even if not per vaginal but 'may be' oral also and therefore Section 376 of IPC has its application to the present crime. She therefore prayed that, the present crime maybe reinvestigated.

5. We are unable to accept the said contention of the learned counsel for the reason that, the Petitioner being an educated woman had signed the First Information Report after thoroughly reading it. Learned counsel for Petitioner on instructions fairly submitted that, the FIR is

recorded as per the version of the Petitioner herself and nothing has been left out by the scribe of the said report who was a lady Police Officer.

After perusing the FIR it is *prima facie* difficult for us to decipher that, an offence as contemplated under Section 376 of the IPC is made out. Undoubtedly, an offence as contemplated under Sections 354, 354B and 509 of the IPC is made out and accordingly the police have submitted charge-sheet. The Medico-Legal Examination Report of Petitioner issued by the Cooper Hospital of Municipal Corporation of Greater Mumbai, does not support the case of prosecutrix, as far as penetrative sexual assault is concerned.

6. In view thereof, we find that the investigation carried out by the investigating agency till date is proper and does not require any interference by this Court in its jurisdiction under Article 226 of the Constitution of India.

7. In view of the above, without expressing our opinion on merits of the case any further, Petition is disposed off.

8. Petitioner is at liberty to oppose the Application preferred by the accused for discharge and or to participate in the trial, being a victim, before the trial Court.

(SHIVKUMAR DIGE, J.)

(A.S. GADKARI, J.)